

## **Washington Estate Tax Invalidated by Supreme Court Decision**

### **Background**

In 1981, Initiative 402 repealed the state inheritance tax and replaced it with an estate tax equal to the amount allowed as a credit against the federal estate tax. This is commonly referred to as a "pick-up" tax. A pick-up tax is not an additional tax on the estate but merely shifts revenues from the federal government to the state.

In 2001, Congress phased out the federal estate tax by 2010 and reduced the credit allowed for state taxes by 25 percent per year. There is no state credit beginning in 2005.

Because the state tax is specifically tied to the federal law before the 2001 act, the state Department of Revenue continued to collect the state tax under the law as it existed before the 2001 federal act. In 2002, bills were introduced in the Legislature both to fully and partially conform to the federal changes in the federal estate tax. None of these bills passed.

The Department's collection of the tax was challenged by several estates, arguing that it was not the intent of the voters to adopt a stand-alone tax and that the Washington estate taxes collected since 2002 were invalid to the extent they exceed the federal tax credit.

### **Supreme Court Decision**

On February 3, 2005, the state Supreme Court held that Washington has a "pick-up" estate tax based on current federal law. The current state statute does not impose an independently operating Washington estate tax. Until the Legislature expressly creates a stand-alone tax, the tax remains a pick-up tax that must be fully reimbursed by the federal credit. In effect, this fully conforms Washington's estate tax to the changes in the federal tax made in 2001 and invalidates the state tax to the extent it exceeds the federal tax credit.

### **Fiscal Impact**

This decision requires refunds of taxes collected since January 1, 2002, of \$152.3 million, a reduction in revenues of \$43.9 million for the 2003-05 biennium, and a reduction in revenues of \$234.9 million for the 2005-07 biennium for a total impact of \$431.1 million.